IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 4452 of 2007(E)

PETITIONER:

P.A.NIAMATHULLA, S/O.P.M.ABDULKAREEM,
KANNATTUPADAVIL HOUSE, U.C.COLLEGE P.O.,
ALUVA, PIN CODE NO.683 102, ALUVA TALUK,
ALUVA WEST VILLAGE, (PROPRIETOR, NRB TRADERS,
U.C.COLLEGE P.O., ALUVA-2).

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY, DEPARTMENT OF
INDUSTRIES, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE TRANSFORMERS AND ELECTRICALS
KERALA LTD.(TELK), REPRESENTED BY ITS
MANAGING DIRECTOR, ANGAMALY SOUTH P.O.,
ERNAKULAM DISTRICT.

3. THE ASSISTANT GENERAL MANAGER
(PLANNING AND STORES), THE TRANSFORMERS
AND ELECTRICALS KERALA LTD.(TELK),
ANGAMALY SOUTH P.O., ERNAKULAM DISTRICT.

4. THE DISTRICT COLLECTOR,
ERNAKULAM, COLLECTORATE, CIVIL STATION,
KAKKANAD, KOCHI.

5. THE ICICI LOMBARD GENERAL INSURANCE
COMPANY LTD., REPRESENTED BY ITS MANAGER,
KNNANKERI ESTATE, 3RD FLOOR, MARINE DRIVE,
SHANMUGHAM ROAD, ERNAKULAM.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.4452/07

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ADVERTISEMENT OF SALE OF COPPR PUBLISHED IN MALAYALA MANORAMA DAILY NEWS PAPER DATED 8.5.06.

EXT.P2: TRUE COPY OF THE SALE ORDER DATED 7.6.06 ISSUED BY THE 5TH RESPONDENT ICICI LOMBARD.

EXT.P3: TRUE COPY OF THE PETITION DATED 18.12.06 PRESENTED BY THE PETITIONER TO THE GOVERNMENT.

EXT.P4: TRUE COPY OF THE GOVERNMENT LETTER NO.37907/H1/06/ID DATED 29.12.2006.

EXT.P5: TRUE COPY OF THE TENDER NOTICE NO.STR/716/05-06 ISSUED BY THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF THE PETITION DATED 11.1.07 PRESENTED BY THE PETITIONER TO THE GOVERNMENT.

EXT.P7: TRUE COPY OF THE PETITION DATED 19.1.07 PRESENTED BY THE PETITIONER TO THE GOVERNMENT.

EXT.P8: TRUE COPY OF THE GOVERNMENT LETTER NO.37907/H1/2006/ID DATED 22.1.2007.

EXT.P9: TRUE COPY OF THE PETITION DATED 22.2.07 PRESENTED BY THE PETITIONER TO THE GOVERNMENT.

EXT.P10: TRUE COPY OF THE GOVERNMENT LETTER NO.393/CMPGRC3/2007/GAD DATED 3.2.2007.

EXT.P11: TRUE COPY OF THE PETITION DATED 9.2.2007 MADE BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.4452 OF 2007 &
I.A.No.2182 OF 2007

Dated this the 13th day of February, 2007

JUDGMENT

The second respondent TELK is a Government company. That means that the Government owns major portion of the shares in the said company, which is statutorily a minimum of 51% of the total holding.

2. Ext.P1 is an advertisement put in by one Pramodh and Sukumar, whom, the petitioner says, are persons representing the 5th respondent Insurance Company. They, by Ext.P1, proceeded to dispose off transit damaged 35 MVA transformer Copper winding, Brand new Copper, approx. 11 MT available for sale at Cochin on as-is-where-is basis. It is submitted that the material is insured by the 5th respondent Insurance Company. It is not in dispute that it is salvage available to the insurer under the terms of the insurance contract between respondents 2 and 5 and that the said salvage is part of materials which were

being transported to TELK in the course of transactions. It appears that the petitioner was given the right to remove it for himself on the basis of Ext.P2.

3. Though it is averred in the writ petition that the 5th respondent insurer had requested TELK to release the goods to the writ petitioner, it appears that thereafter, there were certain controversies which led to the petitioner being deprived of the right to remove the goods, including certain claims which are apparently by 5th respondent insurer and allegedly by TELK on demands regarding certain statutory dues.

4. The petitioner moved the Government, which in turn, forwarded Ext.P3 representation as per Ext.P4, requesting the Managing Director of TELK to give an opportunity of personal hearing to the petitioner and take appropriate decision in the matter at the earliest. It is submitted that though the goods were even then attempted to be removed without being let to the petitioner. According to the petitioner, he moved the

Government and the Government issued certain directions that the goods shall not be removed and that the District Collector attempted to take certain follow up action to insure that the goods are retained. It is also submitted by the petitioner that there was a direction by the Government to keep any further sale in abeyance and give a report about the matter to the Government. It is also pointed out that the petitioner was heard by the MD of the TELK and no further communication was issued in this regard.

5. Learned counsel for the petitioner, faced with a query as to the power of the government to intervene with the managerial matters of TELK, urged that industries fell under entry 24 in list 2 in the 7th schedule and therefore, within the legislative competence of the State and therefore the Government were well within the limits to issue any decision since the executive power is co-extensive with the legislative power. It is also urged that the TELK is a company which works using public funds. It is also pointed out that under the provisions of the Companies Act,

Government are duty bound to place a report regarding the affairs of the company before the legislature. The action taken by the Government is plainly not what has been exercised under Article 162 of the Constitution. All that the Government did was to request TELK to consider the representation of the petitioner. It was also followed up with certain directions not to release the goods. No Government Order in terms of Article 162 is placed on record to state that the Government had issued any decision in the name of the Governor, as is required for the Government to exercise authority under Article 162 of the Constitution. That apart, even assuming that Article 162 would have enabled the Government, it is totally unacceptable for the Government to have issued any such direction in relation to a Government company, particularly when the right of the Government is only to make its views on the Board of the company and that is how a government company functions within the format of the Companies Act. It is not within the powers of the Government to impose on the administrative decisions of the company. I repel this argument not as against the Government, but as against the

petitioner in the nature of the submissions made by him.

6. The police powers of the State also cannot extend to intervene with transactions which are purely in the realm of contract and which do not have the cover of a sovereign function. It is a matter beyond dispute that TELK had an insurance contract with the 5th respondent, which is bound to pay an amount, stated to be Rs.85,00,000/-. The 5th respondent, a private company, is entitled to have the salvage. No writ would necessarily be issued against the 5th respondent. Nor can such a private company be brought under any Governmental decision, unless the Government have other constitutional or statutory power to do so.

7. That apart, the transaction between the petitioner and the 5th respondent is away from the realm of the sovereign functions of the State. It is also away from the realm of statutory contracts as are understood in the realm of writ jurisdiction. Not only that, in the realm of contracts, if the petitioner has a sustainable case

with him, he has an efficacious alternate remedy by way of appropriate proceedings before the competent court for recovery of damages or compensation, as the case may be, even if the 5th respondent was in breach of any of the contract between the 5th respondent and the writ petitioner.

In the aforesaid circumstance, I do not find any sustainable ground to entertain this writ petition and issue any direction. The writ petition and the I.A. are accordingly dismissed. It is clarified that this judgment does not stand in the way of the petitioner working out his remedies, if any, against the 5th respondent before any appropriate court.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.